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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS ZAMARRIPA RUBIO,

Defendant and Appellant.

F077580

(Super. Ct. No. F17902306)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Houry A. Sanderson, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Ian Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Poochigian, J. and Franson, J.

Defendant Juan Carlos Zamarripa Rubio contends on appeal that remand is required for the trial court to consider whether to exercise its discretion, recently granted by Senate Bill No. 1393 (2017–2018 Reg. Sess.; SB 1393), to strike his prior serious felony conviction enhancement. The People concede and we agree. Accordingly, we remand for the court to consider this discretion. We affirm in all other respects.

### **BACKGROUND**<sup>1</sup>

On March 14, 2018, defendant was convicted by jury trial of first degree residential robbery (Pen. Code, § 211;<sup>2</sup> count 1); two counts of corporal injury to a spouse (§ 273.5, subd. (a)); counts 2 & 4), and dissuading a witness by force (§ 136.1, subd. (c)(1)); count 3). Defendant admitted having suffered a prior felony conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)) and a prior serious felony conviction (§ 667, subd. (a)), and having served two prior prison terms (§ 667.5, subd. (b)).

On April 12, 2018, the trial court sentenced defendant to 27 years in prison, as follows: on count 1, six years, doubled to 12 years pursuant to the Three Strikes law; on count 2, eight concurrent years; on count 3, six consecutive years; on count 4, two consecutive years; five consecutive years for the serious felony conviction enhancement;<sup>3</sup> and two consecutive years for the prior prison term enhancements.

On May 31, 2018, defendant filed a notice of appeal.

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<sup>1</sup> The facts are irrelevant to the issue raised on appeal.

<sup>2</sup> All statutory references are to the Penal Code.

<sup>3</sup> We note that the minute order erroneously states this enhancement’s punishment was stricken.

### **DISCUSSION**

When defendant was sentenced, the trial court had no power to strike a prior serious felony conviction enhancement imposed pursuant to section 667, subdivision (a). (See former § 1385, subds. (b), (c)(2), Stats. 2014, ch. 137, § 1.) SB 1393, however, which took effect on January 1, 2019, (Stats. 2018, ch. 1013, §§ 1, 2) amended sections 667 and 1385 to provide trial courts discretion to strike prior serious felony conviction enhancements in the interest of justice. We agree with the parties that the law applies retroactively to defendant because his appeal was not yet final on the law's effective date. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973.) Accordingly, we will remand for the trial court to consider whether to exercise its newly granted discretion.

### **DISPOSITION**

The matter is remanded for the trial court to consider whether to exercise its discretion to strike the prior serious felony conviction enhancement (Pen. Code, § 667, subd. (a)). In all other respects, the judgment is affirmed.